

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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### Legend

Distributing =

Newco1 =

Newco2 =

Newco3 =

Controlled1 =

Controlled2 =

Business A =

Business B =

Business C =

State A =

Distributing Deductible Liability 1 =

Distributing Deductible Liability 2 =

y =

z =

Dear :

This letter responds to your December 3, 2015, request, and subsequent correspondence, submitted by your authorized representatives, for rulings under sections 355, 357, 361, and 1504. The information provided in that letter and in later correspondence is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by penalties of perjury statements executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This letter is issued pursuant to section 6.03 of Rev. Proc. 2016-1, 2016-1 I.R.B. 1, 39, regarding one or more significant issues under sections 355 and 368. The rulings contained in this letter only address one or more discrete legal issues involved in the transaction. This Office expresses no opinion as to the overall tax consequences of the transactions described in this letter or as to any issue not specifically addressed by the rulings below.

FACTS

Distributing, a publicly traded State A corporation, is the common parent of an affiliated group of corporations that files a consolidated Federal income tax return. Distributing is directly and indirectly engaged in Business A, Business B, and Business C through its domestic and foreign subsidiaries.

Distributing and its worldwide group will engage in certain internal restructurings to align Business A, Business B, and Business C in anticipation of the Proposed Transaction (as defined below). Business B and Business C assets held indirectly by Distributing will be separated through internal restructurings into three domestic corporations (or entities treated as corporations for Federal income tax purposes) wholly owned by Distributing: Newco1, Newco2, and Newco3. Newco1 will own certain assets and operations of Business B. Newco2 and Newco3 will each own certain assets and operations of Business C.

### PROPOSED TRANSACTION

Distributing will enter into the following transactions to separate the worldwide operations of Business A, Business B, and Business C (the “Proposed Transaction”), which will result in three separate publicly traded corporations.

- (i) Distributing will form two new wholly owned domestic corporations, Controlled1 and Controlled2.
- (ii) Controlled1 will issue a note to an unrelated third party for cash (the “C1 Cash Proceeds”).
- (iii) Controlled2 will issue a note to an unrelated third party for cash (the “C2 Cash Proceeds,” together with the C1 Cash Proceeds, the “Cash Proceeds”).
- (iv) Distributing will contribute Newco1 and Business B assets (the “First Contribution”) to Controlled1 in exchange for a combination of: (a) Controlled1 stock; (b) liability assumption by Controlled1 (including a portion of the Distributing Deductible Liability 1); and (c) C1 Cash Proceeds. Distributing may also receive debt of Controlled1 (“Controlled1 Notes”) and securities of Controlled1 in the First Contribution.
- (v) Distributing will contribute Newco2, Newco3, and Business C assets (the “Second Contribution”) to Controlled2 in exchange for a combination of: (a) Controlled2 stock; (b) liability assumption by Controlled2 (including a portion of the Distributing Deductible Liability 1 and all of the Distributing Deductible Liability 2); and (c) C2 Cash Proceeds. Distributing may also receive debt of Controlled2 (“Controlled2 Notes”) and securities of Controlled2 in the Second Contribution.

- (vi) Distributing will distribute stock representing at least 80 percent of the outstanding stock of each of Controlled1 and Controlled2 pro rata to Distributing's shareholders (the "External Distribution," together with the First Contribution and the Second Contribution, the "Reorganization").
- (vii) Following the First Contribution and the Second Contribution, and within y months following the date of the External Distribution, Distributing will use the Cash Proceeds to (a) satisfy any Distributing indebtedness (including accrued trade payables) existing at the time of the receipt of the Cash Proceeds or subsequently incurred in the ordinary course of business, (b) redeem any Distributing stock, or (c) make distributions to Distributing shareholders (the "Cash Proceeds Purge"). Distributing will not set aside or otherwise segregate the Cash Proceeds.
- (viii) One or more investment banks (the "Investment Banks"), acting as principals for their own account, may purchase a portion of Distributing publicly traded debt (such acquisition, the "Investment Bank Tender," and such debt, the "Investment Bank Debt"). If such Investment Bank Tender occurs, Distributing will enter into an exchange agreement with the Investment Banks (the "Investment Bank Debt Exchange Agreement") no sooner than five days after the Investment Bank Tender. Pursuant to the Investment Bank Debt Exchange Agreement, if any, the Investment Banks will exchange the Investment Bank Debt for stock and/or securities in Controlled1 and/or Controlled2 (the "Investment Bank Debt Exchange"). The exchange, if any, will occur at least 14 days after the Investment Bank Tender.
- (ix) Distributing may exchange the Controlled1 Notes and/or the Controlled2 Notes, if any, to pay off certain Distributing debt (the "Distributing External Debt") by entering into exchange agreements with targeted existing Distributing security holders. (The "Distributing Direct Debt Exchange").

Distributing's use of either stock or securities of Controlled1 or Controlled2 after the External Distribution shall, in no event, exceed z months following the External Distribution, by which time the Controlled1 and Controlled2 stock and securities will be distributed to Distributing's creditors (including Investment Banks) and/or shareholders or otherwise disposed of.

Following the External Distribution, Distributing, Controlled1 and Controlled2, as well as their respective subsidiaries, will have certain continuing relationships that will be formalized in agreements between them (the "Continuing Relationships"). The Continuing Relationships will include certain agreements to separate the operations of Distributing, Controlled1, and Controlled2 (the "Separation Agreements"). The Separation Agreements will provide for Distributing, Controlled1, and Controlled2 to

make net payments due between them, determined upon expiration of such agreements. A Net Excess will exist if taking into account all amounts due from Distributing to Controlled1 or Controlled2, respectively, and from Controlled1 or Controlled2 to Distributing, respectively, pursuant to the Separation Agreements (offset by any cash Distributing transfers to Controlled1 or Controlled2 in the First Contribution and Second Contribution, respectively), the total amount that Distributing owes to Controlled1 or Controlled2 is less than the total amount that Controlled1 or Controlled2 owes to Distributing, respectively.

## REPRESENTATIONS

Taxpayer makes the following representations:

- (a) The Investment Bank Debt was not issued in anticipation of the External Distribution.
- (b) The Distributing External Debt was not issued in anticipation of the External Distribution.
- (c) The Controlled1 Notes and the Controlled2 Notes have the same terms, except for obligor and interest rate, as the Distributing External Debt exchanged therefor.
- (d) The Distributing External Debt qualifies as “securities” for U.S. Federal income tax purposes.
- (e) The Controlled1 securities issued to Distributing in Step (iv) of the Proposed Transaction, if any, will qualify as “securities” for purposes of section 361(a).
- (f) The Controlled2 securities issued to Distributing in the Step (v) of the Proposed Transaction, if any, will qualify as “securities” for purposes of section 361(a).
- (g) Distributing Deductible Liability 1 did not result in the creation of or increase in the basis of any asset prior to the allocation of Distributing Deductible Liability 1 to Controlled1 in the First Contribution or to Controlled2 in the Second Contribution.
- (h) Distributing Deductible Liability 1 is an accrued liability for financial accounting purposes by Distributing, but will not meet the timing requirement for a deduction by Distributing before the First Contribution under Distributing’s method of tax accounting. Distributing Deductible Liability 1 will meet the timing requirements for a deduction by Controlled1 after the First Contribution under Controlled1’s method of tax accounting.
- (i) Distributing Deductible Liability 1 is an accrued liability for financial accounting purposes by Distributing, but will not meet the timing requirement for a deduction by Distributing before the Second Contribution under Distributing’s method of tax accounting. Distributing Deductible Liability 1 will meet the timing requirements

for a deduction by Controlled2 after the Second Contribution under Controlled2's method of tax accounting.

- (j) The Distributing Deductible Liability 1 will be allocated partially to Controlled1 and partially to Controlled2 pursuant to several factors, including certain legal requirements.
- (k) Distributing Deductible Liability 2 did not result in the creation of or increase in the basis of any asset prior to the allocation of Distributing Deductible Liability 2 to Controlled2 in the Second Contribution.
- (l) Distributing Deductible Liability 2 is an accrued liability for financial accounting purposes by Distributing, but will not meet the timing requirement for a deduction by Distributing before the Second Contribution under Distributing's method of tax accounting. Distributing Deductible Liability 2 will meet the timing requirements for a deduction by Controlled2 after the Second Contribution under Controlled2's method of tax accounting.
- (m) The Distributing Deductible Liability 2 assumed by Controlled2 was incurred in the ordinary course of business and is associated with the assets transferred to Controlled2 in the Second Contribution.

#### RULINGS

Based solely on the information submitted and the representations set forth above, and provided that the Reorganization otherwise meet the requirements of sections 368(a)(1)(D) and 355, we rule as follows:

- (1) The Cash Proceeds Purge will be treated as being pursuant to the Reorganization for purposes of section 361(b) and (c).
- (2) Provided that the Net Excess, if any, with respect to either Controlled1 or Controlled2, is used within y months of the date of receipt and in the same manner as the Cash Proceeds, the Net Excess will be treated as being distributed pursuant to the Reorganization for purposes of section 361(b) and (c).
- (3) The involvement of an Investment Bank in the Investment Bank Debt Exchange described in Step (viii) above will not preclude the application of section 361(c)(3) to the Investment Bank Debt Exchange.
- (4) The Controlled1 Notes and Controlled2 Notes will constitute "securities" for purposes of sections 355 and 361.
- (5) Distributing's completion of the Investment Bank Debt Exchange, and, if applicable, distribution of the stock or securities of Controlled1 or Controlled2 to Distributing's creditors and/or shareholders following the date of the External

Distributing will not preclude the Reorganization and the Investment Bank Debt Exchange from qualifying under sections 355 and 361.

- (6) Distributing Deductible Liability 1 assumed by Controlled1 and Controlled2, respectively, will be excluded in determining the amount of liabilities of Distributing assumed by Controlled1 or Controlled2 for purposes of sections 357(c), 358(d), and 361(b)(3).
- (7) Distributing Deductible Liability 2 will be excluded in determining the amount of liabilities of Distributing assumed by Controlled2 for purposes of sections 357(c), 358(d), and 361(b)(3).
- (8) Except for purposes of section 355(g), amounts transferred between Distributing and Controlled1 or Distributing and Controlled2 (and their respective affiliates) under any of the Continuing Relationships regarding liabilities, indemnities, or other obligations that (i) have arisen or will arise for a taxable period ending on or before the External Distribution, and (ii) will not become fixed and ascertainable until after the External Distribution, will be treated as adjustments to amounts contributed by Distributing to Controlled1 or Controlled2 or distributed by Controlled1 or Controlled2 to Distributing immediately before the External Distribution (Arrowsmith v. Commissioner, 344 U.S. 6 (1952); Rev. Rul. 83-73, 1983-1 C.B. 84).
- (9) Following the External Distribution, neither Controlled1 nor Controlled2 will be a successor of Distributing for purposes of section 1504(a)(3).

### CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the Proposed Transaction under any provision of the Code and regulations or the tax treatment of any condition existing at the time of, or effects resulting from the Proposed Transaction that is not specifically covered by the above rulings.

### PROCEDURAL STATEMENTS

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Julie T. Wang  
Assistant to the Branch Chief, Branch 6  
Office of Associate Chief Counsel  
(Corporate)